

MEMORANDUM

To: Deputy Prosecuting Attorneys and Criminal Defense Attorneys
From: Judge Sharon Armstrong and Judge Palmer Robinson
Re: Changes to Case Scheduling procedures in King County Superior Court
Date: August 19, 2009

INFORMATION SESSION: August 27, 2009 at 4:00 p.m. in Presiding Courtroom of King County Courthouse

Counsel,

As you may know, since fall 2008 a group of prosecutors, defense attorneys, judges, clerks, OPD representatives, and DAJD administrators has been meeting regularly to devise improvements to the processing of felonies in King County Superior Court. The impetus for these changes is the Judicial Management Institute's evaluation of the Superior Court criminal case processing system concluded in September 2008. JMI has continued its involvement with the work group as we have developed these changes.

BRIEF SUMMARY

The JMI Report found major strengths in the current system: specifically, a greater commitment to fairness than in other large jurisdictions; strong leadership by bench and bar; a high level of competence and professionalism; and mutual respect among lawyers, judges and administrators for the role each plays.

It also found significant weaknesses: the court fails to properly manage the case flow process; felony case processing times have grown longer since 1993 and are far longer than State-mandated disposition standards; and interim hearings such as case setting are repeatedly continued and are meaningless. (The Washington Supreme Court's standards for timely criminal case resolution are 90% resolved in 4 months from filing, 98% in 6 months, and 100% in 9 months.)

After many months of work, informed by meetings with prosecutors and defense attorneys, the workgroup has developed several important changes to the process of moving cases toward resolution. This memorandum will briefly summarize the changes and provide copies of the forms we will now use.

The primary change is a very different approach to case scheduling. Rather than repetitive case setting hearings that are continued every 2 to 4 weeks, we will hold one case scheduling conference 28 days after arraignment. The conference will direct case preparation to the time of plea or trial setting. Counsel and the court will discuss a realistic amount of time for preliminary discovery, development of mitigating information, and plea negotiations. This change is intended to limit the number of useless hearings before plea or trial setting.

If the defendant does not plead guilty on the date for plea, the court will set a realistic trial date.

For some cases, typically those that have languished on case setting or are very complex, the court will order a discovery conference, or pre-assign the case to a trial judge.

These procedures are discussed in greater detail below.

CASE SETTING CHANGES

Waiver of Initial 14-day case setting

Because the first case setting hearing (now automatically set 14 days after arraignment) is typically continued, and because we need to avoid transporting in-custody defendants for the mere purpose of obtaining a waiver, the court will routinely permit the defendant to waive the 14-day hearing to a case scheduling conference 28 days after arraignment. The defendant must also waive speedy trial for the same number of days. (Not all waivers will be precisely for 28 days, since SAU and DV cases are heard only on Tuesdays, there will be court holidays, etc.), but the intent is that the primary case scheduling hearing will occur 28 days after arraignment.

Of course, if the defendant elects not to waive, the court will set a trial date at the 14-day hearing.

The waiver procedure is slightly different in Seattle and Kent.

1. Seattle—

- a. At arraignment, the defendant may waive case scheduling for 28 days. We would expect that only defendants who have previously conferred with counsel will execute a waiver at arraignment.
- b. After arraignment, counsel may present the defendant's waiver to court staff in E-1204 (Angela Lang and Erica Conway). Court staff will check the waiver for accuracy while counsel is present and then advise the court and prosecutor of the new case scheduling conference date. **If the defendant is in custody, counsel must present the waiver not later than 1:30 p.m. the court day before the 14 day hearing.** If the defendant is out of custody, counsel may present the waiver at anytime up to and during the case scheduling calendar.
- c. The court staff in E-1204, rather than representatives of the PAO, will approve the waiver in Seattle to help reduce courtroom congestion.

2. Kent—

- a. At arraignment, the defendant may execute a waiver as above.

- b. After arraignment, counsel may drop off the proposed waiver to PAO staff member Craig Haynes in the PAO Records Unit. She will contact counsel if the waiver is not accurate. **If the defendant is in custody, counsel must present the waiver not later than 1:30 p.m. the court day before the 14 day hearing.** If the defendant is out of custody, counsel may present the waiver at anytime up to and during the case scheduling calendar.

Effective Date: Counsel may use the waiver procedure beginning immediately. Waiver forms for Seattle and Kent are attached.

Initial (28 day) case scheduling conference

The initial (28-day) case scheduling conference is the most significant hearing during the pre-trial phase of the case. At the 28-day hearing, the DPA and defense counsel will be expected to report that certain tasks have been completed.

The DPA will confirm counsel has:

- Given preliminary notice of possible amendments to the information
- Provided all discovery to defense, including but not limited to: all police reports, witness statements, DVD's, audio or video tapes, field test reports, lab reports, 911 tapes, jail inmate calls, medical records, and other relevant materials
- Produced appropriate victim medical records when available, or contacted the assigned detective to obtain appropriate consents for records
- Provided defendant's criminal history

Defense counsel will confirm counsel has:

- Completed a conflicts check based on initial discovery
- Requested a competency evaluation, if appropriate
- Initiated application for transfer to drug court/mental health court, if applicable
- Initiated collection of relevant defendant records for drug court/mental health court/mitigation
- Applied for expert funding to develop mitigation, if appropriate
- Conferred with defendant regarding discovery, defendant's criminal history, and plea offer

Both counsel will confirm they have conferred and discussed:

- An offer to resolve the case
- Additional discovery/information needed to evaluate a potential resolution

- Other outstanding referrals/charges and whether defendant prefers to resolve the matters jointly
- The likely progress of case

Order on Case Scheduling Conference

The court will inquire at the 28-day case scheduling conference whether the preliminary tasks have been accomplished. The Order on Case Scheduling Conference will include a checklist to this effect. The court will also discuss with counsel specific tasks that need to be accomplished before the defendant can reasonably make a decision to plead guilty or set the case for trial, the parties' trial date expectations, and appropriate time frames for these tasks. The specific tasks to be accomplished will be recorded on the order, as a mechanism to keep track of case progress. The Order on Case Scheduling Conference is attached.

At the 28-day case scheduling conference, the court will typically set the next hearing, which is the plea or trial setting date, 30 to 60 days after the 28-day hearing. In some cases, for example, when a SSOSA or mental evaluation is being prepared, the interval may be longer. In very complex cases, the court may set an interim status conference. It would be unusual for a case to remain in case setting status for more than 120 days after arraignment.

The case scheduling conference will require advance preparation. Unlike preparing an order at the omnibus hearing, counsel will not be able to effectively create the proposed order during the calendar. Instead, counsel will need to confer before the conference to review the issues on the proposed order. If counsel are not able to create a joint proposed order before the hearing, each party should bring its portion of the order so that it may be completed at the hearing. Coverage counsel must have a proposed order from the assigned counsel. The conference will not be rolled or continued if counsel are not prepared.

We realize the change to a single, 28-day case scheduling conference constitutes a very significant shift in pre-trial criminal case management. We expect it will take some months for this change to become routine. We do hope, however, that the change will result in many fewer court hearings, less burden for counsel, the jail, and out of custody defendants, and more time for actual case preparation.

Effective Date: The court will require the Order on Case Scheduling Conference to be prepared for each case that comes before the court on case setting on or after September 8, 2009. This includes cases that have been on case setting for some time as well as those newly filed. When a status conference is held or in the rare instance when a case scheduling conference is continued, the Order on Case Scheduling Conference must be completed.

DISCOVERY CONFERENCE

In current practice when a trial is set, the case often lies dormant until about 2 to 6 weeks before trial, necessitating continuances of the omnibus hearing and trial.

To promote better use of trial preparation time, the court will schedule a discovery conference for certain cases within 7 to 14 days of trial setting. Initially, we will order cases that have languished in case setting status, or are complex, to have a discovery conference. We may expand the use of discovery conferences depending on their success and court resources.

The discovery conference will be set before a designated judge, depending on the nature of the case. At the conference, counsel and the court will discuss a schedule for witness interviews, completion of lab testing, disclosure of expert opinions, and other issues that typically contribute to delay in trial readiness. An order on discovery conference, which describes the discovery tasks to be accomplished and the due dates, should assist the parties in moving their cases toward completion. The Order on Discovery Conference is attached.

If the assigned trial attorneys are unavailable for a discovery conference, the court will request senior or supervising deputies and senior or supervising defense attorneys to cover the conference. The expectation is that counsel will develop a realistic discovery schedule that moves the case to trial readiness or other resolution.

OMNIBUS HEARING

For now, the omnibus hearing and order on omnibus will remain the same. In the future we may work together to create a procedure and/or an order that is more meaningful.

INFORMATION SESSION: The court invites counsel and interested staff to an information session on **August 27, 2009 at 4:00 p.m. in the Presiding Courtroom of the King County Courthouse**. We hope to answer your questions and hear your recommendations.